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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/501,975	07/15/2004	Jean-Marie Laborbe	7097/US/PCT	3409
29157	7590	05/29/2009	EXAMINER	
K&L Gates LLP P.O. Box 1135 CHICAGO, IL 60690			THAKUR, VIREN A	
			ART UNIT	PAPER NUMBER
			1794	
			NOTIFICATION DATE	DELIVERY MODE
			05/29/2009	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

chicago.patents@klgates.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/501,975	<b>Applicant(s)</b> LABORBE ET AL.	
	<b>Examiner</b> VIREN THAKUR	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 February 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 10-12, 14, 16 and 18-37 is/are pending in the application.
- 4a) Of the above claim(s) 25-37 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10-12, 14, 16 and 18-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. **Claim 10-12,14,16, 19, 23-24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Prasad et al. (WO 0065937) for the reasons given in the previous Office Action, mailed December 2, 2008 and in further view of Coppage et al. (US 3965259), Palmer (US 3808340), and Ziegler (US 3073700).**

Claim 10 previously recited that the source of pigments or colorants was selected from the “group consisting of a powdered blood, a frozen blood, mineral oxides and combinations thereof.” Claim 10 now recites that the colorant is selected only from “a powdered blood, a frozen blood and combinations thereof.

As discussed in the previous Office Action, mailed December 2, 2008, Prasad et al. already teach employing colorants or pigments for the purpose of imparting a roasted appearance to the food product (page 6, line 11 to page 7, line 10). The amendment to claim 10 still only differs in the particular colorant employed.

In any case, it is noted that Coppage et al. teach using dried blood (column 8, line 28). It is not clear as to whether dried blood is powdered blood. Nevertheless, Palmer '340 teaches using blood (example VII on column 7). It is noted that the blood is part of the composition of the coating material, which Palmer '340 teaches, can include coloring materials (column 3, line 40). Also, Ziegler is relied on to teach that it was conventional to use dried blood as a pigment for meat products (column 1, lines 10-18, for instance) which can be in the form of a powder (column 3, lines 47-50 and lines 54-59). Once it was recognized to employ colorants/pigments for achieving a desired color to the food product, the particular conventional colorant/pigment that was employed would have been an obvious matter of choice and/or design to one having ordinary skill in the art. In view of the art taken as a whole, to therefore modify Prasad and employ powdered blood would therefore have been an obvious matter of choice and/or design to one having ordinary skill in the art, routinely determinable by experimentation, depending on the desired color to be imparted.

**4. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 10-12, 14, 16, 19, 23 and 24, above and in further**

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**view of Martin et al. (US 4781939) and Freck et al. (US 3900573) for the reasons given in the previous Office Action, mailed December 2, 2008.**

**5. Claims 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over references as applied to claims 10-12, 14, 16, 19, 23 and 24, above and in further view of Dupont-Delhovren (US 5567466), as further evidenced by Palmer (US 3808340) for the reasons given in the previous Office Action, mailed December 2, 2008.**

**6. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over references as applied to claims 10-12, 14, 16, 19, 23 and 24, above and in further view of Hood (US 4089983), Corbett et al. (US 4508741), Francis (The Encyclopedia of Food Science and Technology), University of Chicago, Dictionary of Food Science and Technology, Durst (US 3434843), Igoe (The Dictionary of Food Ingredients), Stoloff (US 2567085) and Palmer (US 3873736), for the reasons given in the previous Office Action, mailed December 2, 2008.**

It is noted that claim 10, from which claim 22 depends, previously employed a colorant selected from powdered blood, frozen blood and mineral oxides. The mineral oxides have now been excluded from the Markush group. However, claim 22 still recites both the use of powdered blood and a mineral oxide such as iron oxide. Nevertheless, Coppage et al.(column 7, lines 36-52) and Igoe have been relied on to teach that iron oxide has been a conventional food colorant. Additionally, Hood is relied

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on to teach food products for animal and human consumption (column 1, lines 6-9) wherein iron oxide has been employed in combination with other colorants to provide minor adjustments until the desired color is achieved to the food product (column 4, lines 31-35 and lines 40-42). Therefore, the references to Coppage et al., Igoe and Hood have been applied for the reasons given in paragraphs 4 and 7 of the previous Office Action, mailed December 2, 2008. It is noted that Prasad et al. already teach employing colorants or pigments for the purpose of imparting a roasted appearance to the food product (page 6, line 11 to page 7, line 10). Therefore, once it was known to employ particular colorants for the purpose of browning and providing a roasted appearance, the particular conventional colorants employed for achieving the roasted appearance would therefore have been an obvious matter of choice and/or design, routinely determinable by experimentation.

Nevertheless, the references to Palmer '340, Corbett et al., Francis (The Encyclopedia of Food Science and Technology), University of Chicago, Dictionary of Food Science and Technology, Ziegler, Durst, Igoe (The Dictionary of Food Ingredients), Stoloff and Palmer '736 have been relied on for the reasons given in paragraph 7 of the previous Office Action, mailed December 2, 2008.

### ***Response to Arguments***

7. Applicants' arguments on pages 6-7 of the response filed February 18, 2009 have been considered but are not persuasive.

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8. Applicants urge that the references do not teach a colorant selected from the group consisting of powdered blood, a frozen blood and combinations thereof. It is noted however, that Coppage teaches employing dried blood and Palmer '340 teach employing blood as a colorant and Ziegler teaches dried blood which can be powdered and employed as a pigment to food products.

### ***Conclusion***

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VIREN THAKUR whose telephone number is (571)272-6694. The examiner can normally be reached on Monday through Friday from 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on (571)-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/V. T./  
Examiner, Art Unit 1794